

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IOWA TELECOMMUNICATIONS SERVICES, INC., d/b/a IOWA TELECOM	DOCKET NO. SPU-04-8
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ORDER DENYING IN PART MOTION TO RECONSIDER

(Issued June 21, 2004)

On April 27, 2004, the Utilities Board (Board) issued an order in this docket, which among other things, granted a temporary stay pending the completion of this proceeding of the number portability obligations of Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom.

On May 13, 2004, the Wireless Coalition for Intermodal Portability (Wireless Coalition) filed with the Board a "Motion to Reconsider the Temporary Stay or, Alternatively, to Clarify or Lift in Part the Temporary Stay" in this docket.

In support of its motion to reconsider the temporary stay, Wireless Coalition asserts that 1) there are insufficient grounds for granting the stay, and 2) the Board granted the stay without the use of or adherence to clear standards. For these reasons, Wireless Coalition requests the Board reconsider the implementation of the temporary stay in this docket. In the alternative, Wireless Coalition requests that the Board narrow its April 27, 2004, order and clarify that the stay does not apply, or lift the stay if necessary, in those exchanges where Iowa Telecom is completed with

upgrading to local number portability (LNP) or where Iowa Telecom has publicly committed to LNP capability by the May 24, 2004, deadline. Each of these assertions will be described in greater detail below.

On May 26, 2004, Iowa Telecom filed a resistance to Wireless Coalition's motion to reconsider the temporary stay. On June 1, 2004, Wireless Coalition filed a reply to Iowa Telecom's resistance. On June 4, 2004, Iowa Telecom filed an amendment to its resistance.

1. Sufficient grounds existed for granting the temporary stay.

Wireless Coalition contends that the Iowa Telecom's need for a temporary stay of the federal number portability requirements was created by its late-filed petitions, the timing of which should serve to disqualify the parties from receiving a stay. Wireless Coalition cites to an order issued by the Michigan Public Service Commission denying a similar request for a temporary stay.¹ Wireless Coalition asserts that Iowa Telecom has not provided an acceptable reason as to why their request for a stay was filed so close to the FCC's May 24, 2004, deadline.

Iowa Telecom responds that the FCC's wireline to wireless portability requirements were not clarified until November 10, 2003, and that since that time, Iowa Telecom has been working diligently to plan for its network modifications, including LNP compliance. Iowa Telecom also states that its network modifications and LNP compliance were part of the settlement considerations and agreement filed

¹*In the Matter of the Application of Waldron & Ogden Telephone Companies*, Case No. U-13956 / U-13958, Opinion and Order (Feb. 12, 2004).

in Board Docket No. RPU-02-4 and the development of its Network Improvement Plan, which has been approved by the Board for 2004. Iowa Telecom also states that the filings were not untimely and have been properly pursued.

The Board finds that Iowa Telecom did not unduly delay the filing of its petition. The FCC did not specify a deadline for the filing of modifications or suspensions of the number portability requirements, thereby leaving the determination of timeliness with the state commissions. The Board finds that Iowa Telecom filed its petition within a reasonable time after the number portability requirements were classified by the FCC and any further explanation regarding the timeliness of the filing is not required.

Moreover, the Board is not persuaded by the authorities cited by Wireless Coalition. The Michigan Public Service Commission order is addressed to the final merits of the proceeding, not to the question of whether the number portability requirements should be temporarily stayed (for a maximum of 180 days) while the agency considers the merits. These are two different questions; the Michigan order is addressed to the first and is silent on the second.

2. The Board acted appropriately when granting the temporary stay.

Wireless Coalition asserts that the Board should have considered the requisite factors under 47 U.S.C. § 251(f)(2)(A) and (B) to determine whether to grant Iowa Telecom's request for a stay of the number portability requirements. Specifically, Wireless Coalition argues that while the Board considered the public interest factor of

§ 251(f)(2)(B), the public interest would be better served by denying the temporary stay. In addition, Wireless Coalition asserts that Iowa Telecom did not make an adequate showing of necessity as required by § 251(f)(2)(A) and the Board did not consider this factor when granting Iowa Telecom's request for a stay.

In support of its assertions, Wireless Coalition cites to a letter written by K. Dane Snowden, Chief of Consumer & Governmental Affairs Bureau for the FCC, wherein Mr. Snowden encourages a showing of extraordinary circumstances by LECs seeking waivers or modifications of number portability requirements. Wireless Coalition also suggests that generally accepted standards for providing interim relief require a showing of the likelihood of success on the merits and a balancing of harms. It is Wireless Coalition's position that the Iowa Telecom's success on the merits of this petition is unlikely and that the balancing of the harms weighs against the granting of a temporary stay.

Iowa Telecom asserts that the Board acted appropriately pursuant to its authority provided by 47 U.S.C. § 251(f)(2). Iowa Telecom also states that for Wireless Coalition to succeed in this motion, Wireless Coalition would have to demonstrate that there was no reasonable ground for Iowa Telecom's petition and that relief could not be granted upon the conclusion of the proceeding. Iowa Telecom asserts that Wireless Coalition has failed to meet that burden.

The Board finds that the temporary stay was appropriately granted. Iowa Telecom made an adequate showing of necessity pursuant to 47 U.S.C. § 251(f)(2)

when making its initial request for suspension of the number portability requirements. The Snowden letter and the cases cited by Wireless Coalition are neither relevant nor authoritative to this proceeding. Moreover, the alleged universal standards for providing interim relief, if applied in the manner described by Wireless Coalition, would require the Board in this proceeding to reach a conclusion on the merits without allowing Iowa Telecom the benefit of due process. If the Board did not grant a temporary stay of the number portability requirements while this proceeding is pending, Iowa Telecom would be forced to comply with the requirements it seeks to suspend without the opportunity of a hearing. Therefore, the Board finds that granting the stay in this proceeding is justified.

3. Alternative motion to clarify or lift the temporary stay with regard to certain Iowa Telecom exchanges.

Wireless Coalition asserts that the temporary stay should be lifted immediately. In the alternative, however, it is Wireless Coalition's position that it is appropriate for the Board to clarify that the stay does not apply, or lift the stay if necessary with respect to those exchanges where Iowa Telecom has completed upgrading its LNP capability or where Iowa Telecom has publicly committed to that capability by the May 24, 2004, deadline.

In its response to Wireless Coalition's motion, Iowa Telecom states that the Board's April 27, 2004, order provides that Iowa Telecom's request for a temporary stay was granted; Iowa Telecom requested a temporary stay specifically for those exchanges identified as not being compliant by May 24, 2004. As such, Iowa

Telecom does not believe there is a need for clarification. However, Iowa Telecom also states that it does not object to a clarification that the temporary stay granted in this case does not apply to those exchanges shown on Iowa Telecom's "Exhibit A,"² all of which will be compliant by May 24, 2004. Iowa Telecom amended its response to Wireless Coalition's motion on June 4, 2004, clarifying its lack of objection to pertain to the exchanges listed in "Exhibit DRK-1"³ rather than those exchanges listed in "Exhibit A."

As previously discussed, the Board finds that the temporary stay was properly granted in this proceeding and, as such, the Board will not lift the stay. With respect to Iowa Telecom's lack of objection to a clarification of the April 27, 2004, order, the Board will clarify the provisions of the interim stay as not applying to those exchanges listed in Iowa Telecom's exhibit DRK-1, submitted on May 19, 2004.

IT IS THEREFORE ORDERED:

1. The "Motion to Reconsider the Temporary Stay or, Alternatively, to Clarify or Lift in Part the Temporary Stay," filed by Wireless Coalition for Intermodal Portability on May 13, 2004, is denied in part and granted in part.

² "Exhibit A" was attached to Iowa Telecom's "Petition for Suspension or Modification of Number Portability," filed with the Board on March 24, 2004.

³ "Exhibit DRK-1" relates to the testimony of Dennis R. Kilburg, submitted on May 19, 2004.

2. The Board clarifies its order of April 27, 2004, by stating that the provisions of the interim stay do not apply to the exchanges listed in Exhibit "DRK-1" as submitted by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, on May 19, 2004.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 21st day of June, 2004.